

IRS News Release

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Treasury and IRS Issue Guidance on S Corporation, Tax Exempt Entity Transaction

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WASHINGTON — The Treasury Department and the Internal Revenue Service today issued guidance on certain kinds of abusive tax avoidance transactions involving S corporations and tax-exempt entities, such as charities. These transactions are structured to improperly shift taxation away from taxable S corporation shareholders to an exempt party, for the purpose of deferring or avoiding taxes.

In Notice 2004-30, the IRS says it intends to challenge these transactions on a number of grounds. It further declares that these abusive transactions are considered "listed transactions." Participants in a listed transaction who are required to file tax returns must disclose their participation to the IRS. In addition, promoters of listed transactions must keep lists of investors and, in certain cases, register those transactions with the IRS.

This notice is the first time the IRS has exercised its authority under the tax shelter regulations to specifically designate a tax-exempt party as a "participant" in a tax avoidance transaction.

"The participation of tax-exempt entities in these abusive transactions is a worrisome trend," said Mark W. Everson, Commissioner of Internal Revenue. "We are acting today to ensure the integrity of our charities. We don't want Americans to lose faith in a unique and vital part of our nation's social fabric."

"These transactions are structured to eliminate tax on certain S corporation shareholders by inappropriately shifting income to a tax-exempt organization. This abuses the special status that the law gives to tax-exempt organizations," said Gregory F. Jenner, Acting Assistant Secretary (Tax Policy). "Use of tax-exempt organizations as mere accommodation parties should not be permitted."

In addition, the IRS will amend Form 8886, Reportable Transaction Disclosure Statement, to require parties filing the forms to identify the names of all parties to a listed transaction. This includes any tax-exempt parties that facilitate the transaction.

The tax-exempt area is one of the IRS's four top service-wide priorities. The IRS will discourage and deter non-compliance within tax-exempt and government entities, and the misuse of such entities by third parties for tax avoidance or other unintended purposes.